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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,839	11/21/2000	Klaus-Dieter Hammer		3537

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EXAMINER

NOLAN, SANDRA M

ART UNIT PAPER NUMBER

1772

DATE MAILED: 03/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/700,839

Applicant(s)

HAMMER ET AL

Examiner

Sandra M. Nolan

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claims***

1. Claims 1-16 are pending.

### ***Rejection Maintained***

2. The 35 USC 103 rejection of claims 1-16 as unpatentable over DD 24730A in view of Lorcks (US 6,096,809), as set out in section 6 of the 01 July 2003 office action, is maintained for reasons of record.

### ***Response to Arguments***

3. Applicant's arguments in the 01 December 2003 response have been fully considered but they are not persuasive. The arguments presented in that response will be discussed in the order in which they were presented.

On page 5 of the 01 December 2003 response, applicants argue that the primary reference, DD 247830A, does not discuss polyesterurethanes or thermoplastic starch.

However, the examiner has acknowledged that DD 247830A does not teach these things.

Also, on page 5, applicants argue that the processes used in the DD reference will not convert native starch into thermoplastic starch.

However, the thermoplasticity of native starch is not at issue here. Rather, whether the use of a thermoplastic starch is suggested by the DD reference or the Lorcks reference is questionably at issue. And, since Lorcks teaches thermoplastic starches, the issue is resolved.

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Assuming *arguendo* that the thermoplasticity of native starch is at issue and is an important feature of the claimed invention, applicants have not provided any convincing objective evidence to that effect.

On page 6, applicants argue that the DD reference and Lorcks do not both deal with polyurethane/starch combinations.

However, applicants have acknowledged, in the final paragraph on page 5 and the first paragraph on page 6 of the response, that they do in fact teach such combinations.

On page 6, applicants argue that the Lorcks patent does not teach that its compositions are useful to make sausage casings and that it would not be obvious to use the compositions of Lorcks in the casings of the DD reference.

However, dispersions containing polyurethanes and starch are well known in the sausage casing art. See the Muller patent cited below.

On page 6, applicants argue that their film is a microdisperse distribution, as now recited in claims 1 and 16.

However, the use of microdispersions of the starch and polyurethane components of the mixtures suggested by the combination of DD- 247830A and Lorcks is deemed an obvious matter of engineering choice, depending upon the final properties desired in the casings.

Also, the use of devices that produce better dispersions, such as microdispersions, of the starch and polyurethane components of the mixtures

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suggested by the combination of DD 247830A and Lorcks is deemed a matter of optimization. In re Peterson, 65 USPQ2d 1379 (FedCir 2003).

***Citation as of Interest***

Muller et al (US 5,961,906) is cited as of interest for teaching the use of poyesterurethane/starch combinations in sausage casings (col. 5, lines 32-33). Also blown films are disclosed at col. 5, at about line 43.

***Final Rejection***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Conclusion***

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 571/272-1495. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

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If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 571/272-1498. The general fax number for the art unit is 703/872-9306.



S. M. Nolan  
Patent Examiner  
Technology Center 1700

SMN/smn  
09700839(20040211)